Assessment of Egypt's Compliance with the WTO's Anti-Dumping Agreement

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Executive Summary

The purpose of this report is to assess Egypt's compliance with the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, also known as the Anti-Dumping Agreement (ADA).

Under the ADA, a country can impose an anti-dumping duty to offset the dumping of imports by foreign exporters, where such practices are causing, or threatening to cause, material injury to the domestic industry producing like goods. Consistent with Egypt's rights under the WTO and the Government of Egypt's (GOE) responsibility to provide means to protect the national industry from unfair trade practices and sudden surges of imports, the GOE established an institutional framework to implement the provisions of the concerned agreements on anti-dumping, safeguards, and subsidies and countervailing measures. Implementation of these agreements is the responsibility of the Central Department of International Trade Policies (also known as the Subsidies, Anti-Dumping, and Safeguards Department) at the Ministry of Foreign Trade.

The Department began conducting anti-dumping investigations immediately after Egypt joined the WTO in 1995, as the agreement concluded in the final act of the Uruguay Round had become part of local legislation. Nevertheless, it was necessary to issue local legislation specifying the competent authorities and setting the rules governing anti-dumping investigations. Therefore, Egypt issued Law No.161 for the year 1998, and set out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints.

Anti-dumping investigations are conducted in five stages; application for investigation, acceptance, initiation, determining essential facts, and final report. Specific procedures and timelines apply to each stage of the investigation.

Between June 1998 and January 2003 Egypt took 30 anti-dumping actions. Anti-dumping duties were applied to 12 products imported from 21 different countries. Slightly more than half of these actions covering eight of the products applied only to non-WTO members, including China, Latvia, Saudi Arabia, Ukraine, Russia, Kazakhstan, and Syria. The remaining anti-dumping actions cover four products imported from 14 different WTO countries.

Based on Egypt's laws and its implementation of its laws, Egypt is, to a great extent, in compliance with its WTO obligations. Beyond compliance, there are some innovations and improvements, especially in the area of transparency, that can be introduced. These include making non-confidential information about cases and blank questionnaires accessible to the public (including through a website), and establishing a docket system to track active cases.

Finally, certain implementation issues were raised in Turkey's WTO steel re-bar dispute against Egypt's anti-dumping practices. The Ministry of Foreign Trade is currently taking steps, partly with the support of the Assistance for Trade Reform (ATR) project, to address these issues. Measures being taken relate mostly to training new investigators in WTO-compliant procedures. In addition, the Ministry is working with the ATR project to automate several trade remedy processes, which will improve transparency and WTO compliance.

ASSESSMENT OF EGYPT'S COMPLIANCE WITH THE WTO'S ANTI-DUMPING AGREEMENT

INTRODUCTION

In the context of the U.S. Government's DSP II program and the Government of Egypt's commitment to comply with its WTO obligations, the Foreign Trade Policies Sector at the Ministry of Foreign Trade is assessing Egypt's compliance with five WTO agreements. The agreements targeted for these assessments are those addressing Technical Barriers to Trade, Sanitary and Phytosanitary measures, Anti-Dumping, Trade Related Investment Measures, and Rules of Origin. Following these assessments, the GOE will focus on areas of non-compliance to bring them in full conformity with Egypt's international commitments.

This report assesses Egypt's compliance with the Anti-Dumping Agreement (ADA). It first summarizes the main provisions of the ADA and details the Egyptian context for conducting antidumping investigations, including the Egyptian competent authority, local legislation, regulatory timeline, and stages of investigation. The report then assesses the compliance of Egyptian legislation with ADA provisions and summarizes critical aspects of the dispute settlement case brought by Turkey on Egypt's definitive anti-dumping measures on steel rebar from Turkey. Finally, the report sets out recommendations that could improve certain procedural aspects of conducting anti-dumping investigations. Report appendices include a manual of procedures used by investigators at the Subsidies, Anti-Dumping, and Safeguards Department to conduct anti-dumping investigations (Appendix A); Decree No. 549 of 1998 and Egyptian Law No.161 of 1998 that sets out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints (Appendix B); the latest notification provided to the WTO (Appendix C); a sample final report conducted by the department (Appendix D); and the Anti-Dumping-Agreement (Appendix E).

THE WTO ANTI-DUMPING AGREEMENT

Under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, (more commonly referred to as the "Anti-Dumping Agreement"), a country can impose an anti-dumping duty to offset the dumping of imports by foreign exporters, where such practices are causing, or threatening to cause, material injury to the domestic industry producing like goods. In this regard, dumping occurs when foreign producers export goods at prices below those that are charged in the home market, or below the full cost of production of the goods.

The Anti-Dumping Agreement (ADA) provides greater clarity and more detailed rules than its predecessor negotiated during the Tokyo Round. The ADA outlines the methodology for determining when a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

The Agreement provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. The ADA contains relatively specific provisions to determine whether a product is exported at a dumped price. Such provisions include criteria for allocating costs when the export price is compared with a "constructed" normal value, as well as rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement includes the requirement that determination of injury be based on positive evidence and objective examination of the volume of dumped imports and effect of those dumped imports on domestic prices of like products, and the resulting impact on domestic industry. Subject to a few exceptions, the ADA defines "domestic industry" as the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products. The examination of the impact of the dumped imports on the domestic industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned, including at least actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

The ADA establishes clear-cut procedures on how anti-dumping cases are to be initiated and how such investigations are to be conducted. It sets out conditions for ensuring that all interested parties are given an opportunity to present evidence. It strengthens provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures. Thus, it provides that anti-dumping measures shall expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

The ADA requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than two per cent, expressed as a percentage of the export price of the product); that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than three per cent of the imports of the product in question into the importing country unless countries which individually account for less than three percent of imports of the like product in the importing member collectively account for more than seven percent of imports of the like product in the importing member), or where injury is negligible.

The agreement calls for prompt and detailed notification of all preliminary or final anti-dumping actions to the Committee on Anti-dumping Practices. The agreement affords parties the opportunity to consult on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes.

EGYPTIAN CONTEXT FOR ANTI-DUMPING INVESTIGATIONS

The Egyptian Competent Authority

In light of Egypt's membership in the WTO since 1995 and the Government of Egypt's responsibility to provide means to protect the national industry from unfair competition and sudden surges of imports, the GOE established an institutional framework to implement the provisions of the concerned agreements on anti-dumping, safeguards, and subsidies and countervailing measures. Implementation of these agreements is the responsibility of the Subsidies, Anti-Dumping, and Safeguards Department at the Ministry of Foreign Trade, whose role is to implement the rules of the agreements objectively without any bias towards either local production or imported goods.

At its launch the department recruited a number of skilled researchers to form the nucleus of the department. The researchers went through intensive training programs conducted with the cooperation of the WTO Secretariat. Moreover, a number of foreign experts were recruited to assist in designing the organizational structure of the department and the required training programs.

Local Legislation

The department began conducting anti-dumping investigations immediately after Egypt joined the WTO in 1995, as the agreement concluded in the final act of the Uruguay Round had become part of the local legislation. Nevertheless, it was necessary to issue local legislation specifying the competent authorities and setting the rules governing anti-dumping investigations. Therefore, Egypt issued Law No.161 for the year 1998, and set out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints. The main objective of Law No. 161 is the protection of the national economy from the damage caused by dumping in the Egyptian market. This is accomplished through the establishment of dumping compliant investigation procedures leading to the application of trade remedies in cases where dumping is found.

Stages and Timeline of Anti-Dumping Investigations

Anti-dumping investigations are conducted in five stages: application for investigation, acceptance, initiation, determining essential facts, and final report.

Application for Investigation

A written application of the effects caused by dumping is submitted to the Investigating Authority in the form provided for this purpose. The applicant must attach a non-confidential summary to the application, which contains sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence.

Acceptance

The application is accepted only if it is lodged by or on behalf of the domestic industry, chamber of industries concerned, federation of industries, producers' associations, or the ministries supervising any of the production sectors. The application must include evidence of the existence of dumping and the causal link between dumping and the injury caused or threatened to the applicant.

The Investigating Authority should inform the applicant whether its application has been accepted in principle or not. If it is accepted in principle, the Investigating Authority may ask the applicant to provide additional information required for consideration of final acceptance of the application. Department investigators may in fact be in contact with complaining firms for several weeks or months, helping them to prepare the required detailed data necessary for a complete application. Applicant firms that do not cooperate during this phase have their applications terminated for not supplying sufficient information. Several of the 38 anti-dumping cases that were terminated by the Department were terminated during this phase.

Once the Investigating Authority has received the complete application, it should inform the applicant within seven days from the date of receiving the complete application of the final acceptance of its application. The application is registered in a special register, an acceptance report is prepared, and the exporter's Embassy is notified.

Initiation

During the initiation phase, evidence is sought to document the case. An initiation report must be prepared and presented to the Advisory Committee within 30 days of acceptance of the case and the Advisory Committee must make a recommendation to the Minister within 10 days. The Advisory Committee is comprised of 14 members representing ministries of Foreign Trade, Industry, Finance, Agriculture, Public Enterprises, Military Production, and the Customs Authority, in addition to the Undersecretary for Trade Remedies, head of FTPS, and two representatives from the private sector (one from the Federation of Egyptian Industries representing the interests of producers and one from the Federation of Chambers of Commerce representing the interests of importers).

During this phase the domestic industry is identified to assess the standing of the petitioners (i.e. whether they are representative enough of domestic industry - see compliance section), and like products are defined. Relevant business and importer associations and industry chambers are also notified. Customs data are obtained for analysis and importers are identified. The initiation report for the Advisory Committee documents the "prima facie" case, assessing the apparent level of dumping, the absolute and relative level of imports, injury indicators, and the nexus between them. After a positive Advisory Committee recommendation, a Gazette notice is prepared, questionnaires and cover letters finalized, and a non-confidential summary of the case drafted. This material is released if the Minister approves the committee's recommendation. Should the case be rejected at this point, a report outlining the reasons for that determination is prepared within seven days to deliver to the applicant(s).

Egyptian regulations also permit the imposition of provisional duties 60 days after the initiation of a case. To apply a provisional duty the Department must conclude that injury to the domestic industry is being caused by dumping. If the provisional duty is set at the estimated margin of dumping, it can be in effect for four months, extendable to six. If the provisional duty is set at less than the estimated margin, it can be applied for six months, extendable to nine months. The Department has applied provisional duties in several cases but all involved countries that were not members of the WTO at the time of application.

Data Gathering Leading to Essential Facts Report

This phase of the investigation has no explicit regulatory time limit though it generally lasts up to six months from acceptance of the initiation report by the Minister. By regulation, a decision on the anti-dumping investigation must be reached within 12 months from initiation.

During this phase of the investigation questionnaires are sent to domestic producers, importers, exporters and respondent producers. Domestic firms are given 30 days to respond while foreign firms are given 37 days to respond (though Article 23 of Regulation of Law No. 161/1998 states that parties concerned should send their responses within 37 days from the date of receiving the questionnaires). These deadlines are often liberally extended. Deficiency letters with instructions on how to cure the deficiency are sent in cases of inadequate responses. Verification trips are made to responding firms to document the accuracy of responses. In the case of inadequate responses alternative public data are sought. This phase of the investigation concludes with the approval of an Essential Facts Report (EFR) by the Advisory Committee. A non-confidential version of the EFR is sent to all parties for comments. The deadline for comments is 10 days.

A hearing may be held during this phase of investigation if requested and justified by a party to the investigation.

Final Report

This phase of the investigation leads to a final decision on the case, which is recorded in the final report. The final report details the steps in the investigation, the facts considered, and the recommendation made to the Minister. Comments from the parties are considered and disposed of during this phase. Upon the approval of the recommendation by the Minister, a non-confidential version of the report is published as the decision in the case.

Egyptian legislation allows interested parties to request a review of the application of antidumping duties after the duty has been applied for one year. If warranted, the Department will conduct such an investigation, which could lead to termination of the measure. The legislation also provides for a five-year review of the application of dumping measures. It further allows parties to request the review beginning six months before the five-year anniversary of measures.

COMPLIANCE OF EGYPTIAN LAWS AND REGULATIONS WITH THE ANTI-DUMPING AGREEMENT

By ratifying the WTO Agreement in 1995 and through presidential decree No. 72, Egypt committed itself to the implementation of WTO provisions, including those on the implementation of Article VI (the Anti-Dumping Agreement - ADA), as they became part of Egyptian law. Egyptian laws and

regulations generally mirror the provisions of the ADA. Law No. 161/1998 and Regulation of Law No. 161/1998 ("the Regulations") promulgated by Ministerial Decree No.1998/549 are the basis for Egypt's Anti-Dumping jurisprudence. Officials within the investigating authority, which in Egypt is the Subsidies, Anti-Dumping, and Safeguards Department at the Ministry of Foreign Trade, use a manual of procedures, as well as the regulation itself, in conducting anti-dumping investigations. The manual of procedures is based closely on the regulations, but is not as detailed. Depending on its purpose (i.e. whether it is designed to help investigators to make sure they follow all procedural or simply to inform the public about how anti-dumping investigations are conducted), the manual may need to be more fully developed and updated. The full regulations, relevant WTO Agreements, and manual of the Anti-dumping, Subsidy and Safeguard Department of the Ministry of Foreign Trade are contained in the book, The Egyptian System for Antidumping, Subsidies and Countervailing Duties, and Safeguards in the context of the WTO Agreement. The department also publishes a final report booklet for each anti-dumping investigation completed. In addition, according to Article (7) of the Regulations, the department prepares a detailed report that includes information and explanations concerning all anti-dumping related notifications and this report is available to all the interested parties.

We outline the major ADA provisions below, with corresponding articles from Egyptian regulations. We highlight any apparent inconsistencies. The full texts of the Regulations and the ADA are attached (Appendix A and E, respectively).

Dumping Definitions

Dumping

Part III, Section 1, Article 32 of the Regulations defines dumping as: "the introduction of a product into Egypt at an export price, which is less than its normal value, in the ordinary course of trade." (consistent with Article 2.1 of the Anti-Dumping Agreement). The same article defines what constitutes export price and normal value.

Export price

Export price in Egyptian regulation is defined as the price paid or payable by the importer other than any part of the price that represents:

- (i) Costs, charges, and expenses incurred in preparing the goods for shipment to Egypt that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
- (ii) Any other costs, charges, and expenses resulting from the exportation of the goods or arising from their shipment from the country of export.

Where the export price cannot be calculated using this method (for example because of a relationship between importer and exporter), it can be constructed on the basis of the price paid by the first independent buyer of the alleged dumped product in the Egyptian market (consistent with Article 2.3 of the ADA). In this case the export price is calculated as the price paid by the first independent buyer in Egypt minus freight cost to Egypt, insurance, customs duties, sales tax,

clearance and brokerage fees, freight in Egypt, selling general and administrative expenses, other expenses (to be identified), and net profit/loss.

Normal value

Article 32 of the Regulations defines normal value as the price paid for the like goods in the ordinary course of trade for home consumption in the country of origin/export, or the cost of production plus the selling, general and administrative costs in addition to the amount of profit normally realized on sales of goods or the price at which the like product is exported to a third country (consistent with Articles 2.1 and 2.2 of the ADA.)

If there are no sales in the domestic market of the country of export or where domestic sales are made at a loss, or if domestic sales of the allegedly dumped goods account for less than five percent of the export sales to Egypt, Egyptian regulation states that the normal value can be constructed according to the cost of production in the country of origin plus an appropriate amount for selling, general and administrative costs and a reasonable margin of profit, or according to the export price of the goods to a third country. (consistent with Article 2.2 of the ADA)

Dumping margin

Egyptian regulations define the margin of dumping as the difference between the normal value and the export price. They further state that in calculating the margin of dumping, the Investigating Authority has to make the calculations on the same level of trade for as nearly as possible the same period, taking into consideration the factors which affect price comparability pursuant to the provisions of Article 2.4 of the Anti-dumping Agreement.

Existence of Injury, Causality, and Cumulation of Imports

Impact of Dumped Imports on Prices and Domestic Industry

The ADA states that determination of injury must be based on evidence and examination of volume of dumped imports and effect of the dumped imports on prices in the domestic market for like products, as well as the consequent impact of these imports on domestic producers of such products (Article 3.1 of the ADA). The ADA calls for the investigating authority to consider both absolute and relative increases in dumped imports, and to consider price undercutting, price depression, or price suppression (Article 3.2 of the ADA).

Egyptian Regulation: Article 39 of the Regulations requires the investigating authority to examine all positive evidence and verify the existence of significant increase in dumped imports, either in absolute terms or relative to production or consumption in Egypt. On the effect of dumped imports on prices, the authority is required to consider the following:

a. Whether there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product,

Threat of Injury

The ADA provides that anti-dumping duties can be imposed in cases of threat of material injury. However, it requires that such threat of material injury must be based on facts and not merely on conjecture and must be imminent. Factors that the investigating authority must examine include a significant rate of increase of dumped imports into the domestic market, indications of the likelihood of greatly increased dumped exports to the importing country's market, import prices and their likely effect on domestic prices, and inventories.

Egyptian Regulation: Article 40 of the Regulations provides that when determining threat of injury the investigating Authority must verify that the threat of injury is clear and imminent and also consider the following:

- 1- The rate of increase of the dumped imports.
- 2- Likelihood of a significant increase in dumped imports into Egypt in the light of contracts (future purchase orders).
- 3- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
- 4- The existence of significant export capacity of industry or significant inventories of the product in question in the exporting companies.
- 5- Any other factors which the Investigating Authority determines to have an economic effect on the industry.

Cumulation of Dumped Imports

The ADA provides that the investigating authority may cumulatively assess the effects of imports of a product from more than one country only if it determines that the margin of dumping for each country is more than de minimis, the volume of imports from each country is not negligible, and a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition (Article 3.3 of the ADA).

Egyptian Regulation: Article 43 of the Regulations states that where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

- 1. The margin of dumping established in relation to the imports from each country is 2 percent or more of the export price.
- 2. The volume of imports from each country is 3 percent or more of the total volume of imports of the like product into Egypt.
- 3. The existence of competition among the imported products and between the imported products and the like domestic products.

Initiating an Investigation

Written Application

The ADA requires that a dumping investigation be initiated upon a written application by or on behalf of the domestic industry (Article 5.1 of the ADA).

Egyptian Regulation: According to the Regulations, Article (14), the dumping application will be accepted only if it is lodged by or on behalf of the domestic industry, chamber of the industries concerned, federation of industries, producers associations or the ministries supervising any of the production sectors. In addition, the application must include evidence of the existence of dumping, injury caused, and the causal link between dumping and the injury caused or threatened to the applicant. According to the regulations, Article (22), the Department publishes the notice of the initiation of an investigation in the Official Gazette.

Domestic Industry

The ADA requires that the application is to be "considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry." (Article 5.4 of the ADA)

Egyptian Regulation: Article 19 of the Regulations mirrors Article 5.4 of the ADA.

Publicizing the Application

The ADA requires that the authorities avoid publicizing the application to initiate a dumping investigation unless a decision has been made to initiate the investigation. It also requires authorities to notify the exporter's government once a properly documented application has been received but before proceeding to initiate an investigation. (Article 5.5 of the ADA)

Egyptian Regulation: Article (21) of the regulations provides that the Investigating Authority must notify the governments of the countries concerned with an application once it has been accepted and before proceeding to initiate an investigation.

Initiation of an Investigation by Authorities

The ADA requires that in cases where authorities decide to initiate a dumping investigation without having received a written application on behalf of the domestic industry that they only do so if they have sufficient evidence of dumping, injury, and a causal link to justify initiating an investigation. (Article 5.6 of the ADA)

Egyptian Regulation: According to the regulations, Article (20), the Investigating Authority may, after presenting a report to the Advisory Committee and after approval of the Minister of Trade & Supply initiate an investigation without having received a written application by or on behalf of the domestic industry for the initiation of such investigation only if it has sufficient evidence of dumping, subsidy or unjustifiable increase of imports, injury and a causal link to justify the initiation of an investigation.

Rejecting Applications

The ADA requires that a dumping application be rejected and an investigation terminated promptly as soon as the authorities determine that there is not enough evidence of either dumping or of injury to justify proceeding with the case, including when the margin of dumping is found to be de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. (Article 5.8 of the ADA)

Egyptian Regulation: According to Article (30) of the regulations, an investigation is to be terminated if the Investigating Authority finds no sufficient evidence of "injurious practices, injury or causal link between both."

Customs Clearance

The agreement requires that an anti-dumping proceeding must not hinder customs clearance procedures. (Article 5.9 of the ADA)

Egyptian Regulation: Article 28 of the regulations provides that dumping investigation procedures must not prevent clearance of consignments of the subject goods from customs.

Evidence

Confidential Information

The ADA requires that confidential information provided as part of an investigation be treated as such by authorities upon good cause shown and not be disclosed without specific permission by the party submitting it. (Article 6.5 of the ADA)

Egyptian Regulation: Article 9 of the Regulations requires all persons and bodies to protect the confidentiality of information and data in cases where it is necessary for the purpose of investigation or appeal to have access to such information. Article 6 requires all authorities and persons involved in anti-dumping investigations (as well as subsidy and safeguard investigations) to protect confidentiality of information. Moreover, Article 7 of the law states that any authority or person that

T¹ TNow the Ministry of Foreign Trade

violates Article 6 will be subjected to a fine estimated to be not less than 10,000 Egyptian Pounds and not more than 50,000 Egyptian Pounds.

Provision of Non-Confidential Summaries

The ADA provides that authorities must require provision of non-confidential summaries from parties submitting confidential information and require that such summaries be in sufficient detail to allow reasonable understanding of the confidential information submitted. Where parties indicate, in exceptional circumstances, that such summarization is not possible; they must provide a statement listing reasons for not being able to provide a summary. (Article 6.5.1 of the ADA)

Egyptian Regulation: Article (8) of the Regulations mirrors Article 6.5.1 of the ADA.

Availability of Information

The ADA requires that, subject to the requirement to protect confidential information, evidence presented in writing by one party must be made available to other parties participating in the investigation. (Article 6.1.2 of the ADA)

Egyptian Regulation: According to the Regulations, Article (29), the department makes available to all the interested parties all information and data relevant to the investigation, taking into consideration the requirement of protecting confidential information.

Opportunity to Defend Interests

The ADA requires that all interested parties in an anti-dumping investigation be given full opportunity to defend their interests, including, upon request, providing the opportunity for interested parties to meet and present their views, taking into account issues of confidentiality and convenience. However, parties are not obligated to attend meetings, and their failure to attend meetings is not to be considered prejudicial to their case. Interested parties also have the right, upon justification, to present other information orally, but such information is not to be taken into account by the authorities unless it is subsequently provided in writing and made available to other interested parties. (Articles 6.2 and 6.3 of the ADA)

Egyptian Regulation: According to the Regulations, Article (25), the department provides full opportunity for all interested parties to defend their interests and to meet those parties with adverse interests to present all opposing views and rebuttal arguments. Also the department may, upon request, hold hearings for the interested parties to present their views and arguments, but those views will not be taken into consideration unless they are presented in writing later on.

Public Notice

The ADA requires that a public notice of the initiation of an investigation contain adequate information on the following (Article 12):

- a. The name of the exporting country or countries and the product involved;
- b. The date of initiation of the investigation;
- c. The basis on which dumping is alleged in the application;
- d. A summary of the factors on which the allegation of injury is based;
- e. The address to which representations by interested parties should be directed;
- f. The time limits allowed to interested parties for making their views known.

Egyptian Regulation: According to the Regulations, Article (6), (21), (22), and (23), the department notifies the governments of the countries (or through their diplomatic missions or authorized consuls in the Arab Republic of Egypt) concerned with the applications already accepted before proceeding to initiate an investigation. The Investigating Authority is also required to publish the notice of the initiation of an investigation in the Official Gazette, which must include:

- 1. Names of the countries of origin or export of the product under investigation.
- 2. A description of the product in question
- 3. A description of the allegations and practices under investigation
- 4. A summary of the basis for alleged injury.
- 5. Time limits for other parties concerned to reply.
- 6. The address the interested parties should send their replies to.

Egyptian regulation requires that parties concerned should send their responses within 37 days from the date of receiving the questionnaires, extendable upon good cause accepted by the Investigating Authority (though in practice domestic parties to an investigation are given 30 days to return their questionnaires). The regulation does not indicate that the date of initiation of investigation be included in the public notice.

Provisional Measures

The ADA provides that provisional measures may be imposed after an investigation has been initiated, a public notice issues, and parties have had a chance to comment; a preliminary positive determination has been made of dumping and consequent injury; and if the authorities believe that the measures are necessary to prevent injury during the investigation. In those cases the authorities may impose provisional measures in the form of a provisional duty or, preferably, a security (cash deposit or bond) equal to the amount of the anti-dumping duty provisionally estimated (which should not be greater than the provisionally estimated margin of dumping). Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation. The ADA further requires that provisional measures not be applied for a period exceeding four months, or in specified circumstances, six months. These periods may be six to nine months, respectively, if the duty contemplated is less than the dumping margin. (Article 7 of the ADA).

Egyptian Regulation: According to Article (44) of the Regulations, provisional measures may take the form of cash deposit, which is not greater than the provisionally estimated margin of dumping. Such provisional measures are not to be applied sooner than 60 days from the date of initiation of investigation and "a conclusion is made by the Investigating Authority that there exists dumping which caused injury to the domestic industry." Provisional measures are to be applied for a period

not exceeding four months, extendable to six months, unless the provisional duty is less than the dumping margin, in which case those periods can be extended to six and nine months, respectively.

Egyptian regulation does not describe in which cases provisional measures can be imposed, only how they can be imposed. There might also be a slight problem in the wording of Article 44 in the regulation. If the investigating authority concludes dumping, injury, and causality within the 12-month investigation period, definitive measures would apply, not provisional ones, as may be implied by the sentence "...and a conclusion is made by the Investigating Authority that there exists dumping..." What is meant is probably "preliminary positive determination" rather than "conclusion is made."

Price Undertaking

The ADA provides that, when authorities are satisfied that the injurious effect of dumping can be eliminated through specific exporters undertaking to revise their prices or to cease exports to an area at dumped prices, they may suspend or terminate anti-dumping proceedings without the imposition of provisional measures or anti-dumping duties. The agreement provides that it is desirable if price increases are less than the margin of dumping when these increases are adequate to remove injury to the domestic industry. A preliminary affirmative determination of dumping and injury caused by dumping is necessary for price undertakings to be sought or accepted from exporters. Moreover, price undertakings need not be accepted if authorities find them impractical. (Article 8 of the ADA)

Egyptian Regulation: According to Article (48) of the Regulations exporters may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings are not to be higher than necessary to eliminate the margin of dumping established by the Investigating Authority. The regulation requires that the following issues be considered when accepting, rejecting or amending undertakings:

- 1. The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the margin of dumping unless the exporters ask to continue the investigation.
- 2. Informing the exporters in case of rejection and the reasons for that rejection if practicable.
- 3. The Investigating Authority may also require any exporter from whom an undertaking has been accepted to periodically provide information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data.

The Department, so far, has not accepted any price undertakings due to the high financial and physical resources that monitoring compliance with such undertakings would require of the Egyptian authorities. Resources permitting, it will consider accepting price undertakings in the future.

Imposition and Collection of Anti-Dumping Duties

The ADA provides that anti-dumping duties lower than the dumping margin are desirable if they are adequate to remove injury to the domestic industry. It also provides that such anti-dumping duties are to be collected in a non-discriminatory way from all sources of dumping (except parties from which price undertakings were accepted). In addition, the ADA calls for authorities to promptly carry out a review to determine individual dumping margins for exporters or producers who have not exported the product subject to anti-dumping duties to the importing country during the investigation period. These exporters or producers would need to show that they are not related to any of the exporters or producers who are subject to anti-dumping duties. While the review is being conducted (on an accelerated basis), authorities are not to levy any anti-dumping duties on products from these exporters or producers. However, the agreement also provides that authorities may withhold appraisement and/or request guarantees to ensure that anti-dumping duties can be levied retroactively should the review result in a dumping determination in respect of these producers or exporters (Article 9 of the ADA).

Egyptian Regulation: Article 45 of the Regulations provides that anti-dumping duties will not exceed the dumping margin and will be imposed on dumped imports from all sources found to be causing material injury to the domestic industry, except from sources whose price undertakings are accepted. Article 46 provides that definitive anti-dumping duties are to be imposed for a period not to exceed five years from the date of publishing the final determination of imposition in the Official Gazette. In addition, Article 47 provides that in cases where products subject to definitive anti-dumping duties are exported to Egypt by exporters or producers who have not exported the product to Egypt during the period of investigation, the authority is to promptly carry out a review for the purpose of determining individual margins of dumping for each of them provided that they can show that they are not related to any of the exporters or producers referred to during the course of the review. In these cases, the regulation provides that the Investigating Authority may request guarantees, which are equal to the definitive anti-dumping duties, imposed on other exporters from the date of initiating the review.

Retroactivity

The ADA provides that anti-dumping duties may be levied retroactively for the period that provisional measures were applied after a final injury determination is made. Anti-dumping duties can also be levied retroactively in the case of a threat of injury where the effect of the dumped imports would have led to an injury determination in the absence of the provisional measures (Article 10.2 of the ADA). The difference between the definitive and provisional anti-dumping duty (or security amount estimated) is not to be collected if the former is higher than the latter. If the provisional duty is higher than the definitive duty, the difference is to be reimbursed or the duty recalculated as the case may be. (Article 10.3 of the ADA)

Definitive anti-dumping duties may be charged on imported products that entered the market within 90 days of the imposition of provisional measures, provided that there is a history of dumping that caused injury or that the importer was or should have been aware that the exporter

practices dumping; and that the injury is caused by massive dumped imports in a short time and is likely to undermine the remedial effect of the definitive anti-dumping duty to be applied. The importers are to be given an opportunity to comment in the latter case. (Article 10.6 of the ADA)

Egyptian Regulation: Article (51) of the Regulations provides that, where a final determination of injury or threat thereof is made, anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied. Article (52) provides that if the definitive anti-dumping duty is higher than the provisional duty paid, the difference is not to be collected. However, if the definitive duty is lower than the provisional duty paid, the difference is to be reimbursed. In addition, Article (54) provides that a definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a. There is a history of dumping which caused injury or that the importer was aware or should have been aware that the exporter practiced dumping and that such dumping would cause injury, and
- b. The injury is caused by increased dumped imports of a product in a relatively short time which is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

The department has not imposed duties retroactively in any of the cases handled so far.

Duration and Review of Anti-Dumping Duties and Price Undertakings

The ADA provides that an anti-dumping duty is not to be maintained longer than is necessary to counteract dumping that is causing injury (Article 11.1 of the ADA). It also provides that anti-dumping duties are not to be imposed for a period exceeding five years unless authorities upon review initiated before that date or upon substantiated request on behalf of the domestic industry determine that dumping and injury will likely continue or recur in the absence of anti-dumping duties (Article 11.3 of the ADA). Exporters/producers can request a review from the Investigating Authority if a reasonable time has elapsed since the imposition of the duties and the interested party submits information substantiating the need for a review. The anti-dumping duty is to be terminated immediately if the authorities determine upon review that it is no longer warranted (Article 11.2 of the ADA). The review is to be carried out expeditiously and should normally be concluded within 12 months of the date of initiation of the review.

Egyptian Regulation: Article 55 of the Regulations provides that the investigating authority may, after one year from the date of imposition of definitive anti-dumping measures, review the need for the continued imposition of the duty, where warranted, upon request by any interested party, which submits positive information substantiating the need for a review. If, as a result of the review, the investigating authority determines that the definitive anti-dumping duty is no longer warranted it must be terminated immediately. If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

Article 55 also provides that the investigating authority may, at any time, carry out a review on its initiative if necessary. In addition, Article 56 calls for the Investigating Authority to carry out a review on its initiative or upon request by a concerned party, six months before the expiry of the five-year period from the date of the imposition of definitive duties. In conducting the review the Investigating Authority is to determine whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury. The duty is to remain in force pending the outcome of such a review, which should be concluded within 12 months of the date of the initiation of the review.

Judicial review

The ADA requires each WTO member whose national legislation contains provisions on antidumping measures to maintain judicial, arbitration, or administrative tribunals or procedures for the purpose of the prompt review of administrative actions to final determinations and reviews of determinations. It further calls for these tribunals or procedures to be independent of the authorities responsible for the determination or review in question. (Article 13 of the ADA)

Egyptian Regulation: According to the Regulations, Article (95), concerned parties have the right of appeal to the Administrative Court concerning the measures and decisions taken. According to Article (88), where a decision by final judgment is issued for termination of any measures taken in accordance with the provisions of this regulation, the Minister of Trade and Supply may terminate these measures or give directions to the Investigating Authority to reconsider these measures in the light of recommendations made by the final judgments.²

Notifications

Article 16.4 of the ADA requires WTO members to report to the Committee on Anti-Dumping Practices all preliminary or final anti-dumping actions taken. WTO members are also required to submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. Moreover, Article 18.5 of the ADA requires that each member inform the Committee on Anti-Dumping Practices of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Egyptian Regulation: According to the Regulations, Article (90), the Investigating Authority is tasked with advising the relevant trade remedy committees in the WTO of all notices required by the agreements. In practice, the Department notified the WTO as soon as Egypt trade remedy laws and regulations came into effect (the notification was submitted in November 1998). The Department has also made semi-annual notifications to the Committee on Anti-Dumping Practices since the entry into force of the WTO in 1995 and is fully up to date (last notification submitted in January 2003).

² This is now the responsibility of the Minister of Foreign Trade.

Implementation of Anti-Dumping Cases

In light of the Agreement's provisions and of Egyptian legislation, the Department has implemented these rules and regulations during the process of investigation in all cases investigated.

Between June 1998 and January 2003 Egypt took 30 anti-dumping actions. Anti-dumping duties were applied to 12 products imported from 21 different countries. Slightly more than half of these actions covering eight of the products applied only to non-WTO members, including China³, Latvia⁴, Saudi Arabia, Ukraine, Russia, Kazakhstan, and Syria. The remaining anti-dumping actions cover four products imported from 14 different WTO countries and were notified as required. Investigations were completed on two additional cases but no anti-dumping duties were applied. There are currently five active investigations, two sunset reviews, and two cases nearing acceptance by the Department. In one instance, anti-dumping duties against imports of stainless steel sinks from Spain and Greece were allowed to expire after five years. During the same period 38 pending cases were either not accepted or terminated before initiation. Anti-dumping duties have not been applied against agricultural products.

DISPUTE CONCERNING ANTI-DUMPING MEASURES IMPOSED ON STEEL REBAR FROM TURKEY

In November 2000 Turkey requested consultations with Egypt under the WTO's dispute settlement understanding procedures regarding the definitive anti-dumping measures imposed by Egypt on imports of concrete steel reinforcing bar (rebar) from Turkey. When both parties failed to reach a mutually satisfactory resolution during the consultations, Turkey requested the establishment of a panel to examine elements of the dispute. Since the allegations involved major aspects of how Egypt conducts anti-dumping investigations, including how the investigating authorities determine dumping, determine injury, and collect, use, and share evidence, the case provides practical evidence of Egypt's compliance with the ADA. The panel found that Egypt "did not act inconsistently" with its obligations under the ADA on 19 of Turkey's claims. The panel did, however, find that Egypt acted inconsistently with its obligations under two claims by Turkey and asked that Egypt bring its definitive anti-dumping measures on steel rebar from Turkey into conformity with relevant provisions of the ADA.

At a January 29, 2003 WTO Dispute Settlement Body (DSB) meeting in Geneva, Switzerland, Egypt informed the DSB that it intended to comply with the DSB's recommendations and rulings in this case. It also stated that it would consult with Turkey to agree on a reasonable period of time for implementation. Below is a summary of the major claims and the panel's findings related to dumping determination, injury determination, and evidence.

³ Six cases were brought against imports from China before it became a member of the WTO. Once China became a member of the WTO in December 2001, the department began notifying interested parties.

⁴ Latvia became a member after a dumping action taken in 1998. The duties on steel re-enforcing bars are currently the subject of a five-year "sunset" review.

Claims and Panel Findings Related to Dumping Determination

Claims

- Turkey claimed that the Egyptian Investigating Authority violated certain ADA provisions because it was not justified in resorting to "facts available" (Article 2.2.1.1 and 2.2.2).
- Turkey claimed that the Egyptian Investigating Authority imposed an unreasonable burden of proof upon respondents by waiting until late in the investigation to raise issues requiring them to submit new factual information and then imposing a burdensome "mail order" verification requirement on the respondents (Article 2.4).
- Turkey claimed that Egypt violated Article 2.4 in that the Investigating Authority failed to
 make a credit cost adjustment to normal value for differences in payment terms between
 home market sales and exports sales to Egypt.

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under these ADA provisions.

Claims and Panel Findings Related to Injury Determination

Claims

- Turkey claimed that Egypt failed to examine all factors listed under Article 3.4 (evaluating
 all economic factors having an impact on the industry), in particular productivity, actual and
 potential negative effects on cash flow, employment, wages, growth and ability to raise
 capital or investments.
- Turkey claimed that Egypt failed to develop specific evidence linking imports to adverse
 volume and price effects on the domestic industry, and failed consequently to base the
 finding of a causal link on positive evidence.
- Turkey claimed that Egypt failed to take account of, and attributed to dumped imports, the effects of other "known factors" injuring the domestic industry.
- Turkey claimed that Egypt failed to demonstrate that the imports caused injury "through the
 effects of dumping."

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under the relevant ADA provisions, except with respect to one claim. The panel found that "while it gathered data on all of the factors listed in Article 3.4, the Egyptian Investigating Authority failed to

evaluate all of the factors listed in Article 3.4 as it did not evaluate productivity, actual and potential negative effects on cash flow, employment, wages, and ability to raise capital or investments."

Claims and Panel Findings Related to Evidence

Claims

- Turkey claimed that Egypt changed the "scope" of the injury investigation from threat of
 material to present material injury, without informing Turkey and after the deadline for
 submitting factual information in the investigation.
- Turkey claimed that the Investigating Authority's resort to facts available was unjustified as
 the basis for initially questioning then rejecting respondents' costs was unfounded.and that
 Turkish respondents provided all necessary information and did not impede the investigation.
- Turkey claimed that Egypt failed to verify the cost data during the "on-the-spot" verification, and conduct of "mail order" verification instead.
- Turkey asserted that the three Turkish respondents requested a meeting with the Investigating Authority in which they could explain how information they had submitted responded to the Investigating Authority's information requests. Turkey also claimed that the denial of these requests violated ADA provisions by denying Turkish respondents the basic right to be informed of reasons why evidence or information presented is not accepted, and to be given an opportunity to provide further explanations within a reasonable period.

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under the relevant ADA provisions except with respect to one claim. The panel found that "with regard to two of the Turkish exporters, as the Egyptian Investigating Authority, having received the information that it had identified to these two respondents as being necessary, nevertheless found that they had failed to provide the necessary information, and further, did not inform these two exporters of this finding and did not give them the required opportunity to provide further explanations before resorting to facts available."

Recommendations for Follow-up

The Egyptian anti-dumping system is to a great extent in compliance with the ADA, in both law and implementation. However, there are areas where innovations and improvements can be made.

MINOR LEGISLATIVE COMMENTS

Though Regulation of Law No. 161/1998 largely mirrors ADA provisions, there are a few provisions in the regulation that do not match up exactly with the ADA. These include:

- Article 41 of the Regulations requires the Investigating Authority to verify that the injury suffered by the industry is caused by the dumped imports and not due to any other causes. Though this is consistent with Article 3.5 of the ADA, the regulation does not mention examples of evidence other than dumping that may cause injury (as the ADA Article 3.5 does), including volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry. Since the ADA is technically part of Egyptian legislation, this is not a problem as long as investigators do conduct thorough analyses to verify all other causes that could have caused injury.
- Article 12 of the ADA requires that a public notice for the initiation of an investigation include specific information about the investigation. Article (22) of the Regulations lists all information required in a public notice but does not include the date of initiation of the investigation.
- Article 7 of the ADA outlines how and under which circumstances authorities may impose
 provisional measures. Article (44) of the Regulations only mentions how provisional
 measures may be imposed. The same regulation may need to clarify wording as to when
 provisional measures are imposed (i.e. after preliminary positive determination or after
 "conclusion" of the investigation).

ANALYTICAL AND INVESTIGATIVE PROCEDURES

While the WTO dispute panel on steel rebar found that Egypt did not act inconsistently with its obligations under the ADA with respect to 19 specific allegations by Turkey, it did find that Egypt needed to bring two aspects of its anti-dumping procedures into compliance:

Failure to evaluate all the factors listed in Article 3.4 of the ADA as the Investigating
Authority did not evaluate productivity, actual and potential negative effects on cash flow,
employment, wages, and ability to raise capital or investments, when it examined and
evaluated all economic factors having an impact on the industry. The Department has already

- taken steps to ensure that such an evaluation is undertaken in all investigations, including further training for investigators in injury determination.
- Failure to let two respondents know that they did not provide the necessary information and
 to give them an opportunity to provide further explanations before resorting to facts
 available. In this case also, department investigators need to be further trained in undertaking
 proper procedures in anti-dumping investigations.

TRANSPARENCY

The Department publishes a book on Egypt's trade remedy system - *The Egyptian System for Antidumping, Subsidies and Countervailing Duties, and Safeguards in the context of the WTO Agreement* - which contains the relevant decree, laws, regulations, procedures, and WTO agreements. The Department also publishes final reports on anti-dumping cases and is up to date on notifications. Together these elements meet the ADA's transparency provisions. However, some additional measures of transparency can probably be added that would have the effect of improving access of interested firms, lawyers, and academic researchers to anti-dumping procedures. As these groups become more informed, anti-dumping applications are likely to improve, which would then allow investigators to focus more on the statutory part of their work. Potential measures include:

- Developing, updating, automating, and releasing the manual of investigations (the updated manual would also serve to identify the underlying work processes that will be the basis of the Automated Work Flow System – AWFS – that is currently being put in place).
- Another innovation would be to make the blank questionnaires available on the web or elsewhere.
- A publicly accessible docket system could be developed identifying active cases and their status in the pipeline. The AWFS might support posting all of this public material on a website.

Appendix A

MANUAL OF PROCEDURES FOR CONDUCTING ANTI-DUMPING INVESTIGATIONS

Appendix B

DECREE NO. 549 OF 1998 AND EGYPTIAN LAW NO.161 OF 1998

Appendix C EGYPT NOTIFICATION TO THE WTO (JANUARY 2003)

Appendix D

SAMPLE FINAL REPORT FOR AN ANTI-DUMPING INVESTIGATION

_____Appendix E___ ANTI-DUMPING AGREEMENT